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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 349.

CARLOS M. DE CASTRO, *Petitioner*,

v.

BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent*.

PETITIONER'S REPLY BRIEF.

WILLIAM CATTRON RIGBY,
FRED W. LLEWELLYN,
GABRIEL DE LA HABA,
Attorneys for Petitioner.

HUGH R. FRANCIS,
RIGBY, LEON & WEILL,
Of counsel.

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BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent*.

On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

PETITIONER'S REPLY BRIEF.

STATEMENT OF THE CASE.

A. (1). Under this heading in respondent's brief opposing counsel suggest that there are certain facts not stated in petitioner's brief that should be considered and weighed, and mention first the fact that Resolution No. 373, adopted by the Respondent Board on April 5, 1939, removing the petitioner from office, contained findings of fact convicting petitioner of "dereliction, inexcusable negligence and im-

moral and improper conduct in the discharge of the duties of his office." Opposing counsel then further assert that the District Court of San Juan upheld the resolution of the Board, "stating that the evidence was conflicting on these issues"; and after reiterating the details of the judicial procedure by which the removal of the petitioner was adjudged unlawful and his reinstatement ordered, they add that:

> "The chief executive officer of the largest city in Puerto Rico who had been condemned by his fellow citizens as derelict, inexcusably negligent, and guilty of immoral and improper conduct, was ordered back into the office of City Manager of San Juan."

If this were a fair statement of the related facts it would more than suffice for us to point out that those facts are wholly irrelevant and immaterial to any question now before this Court, because they bear solely upon the question of the legality of petitioner's removal from office, an issue long since finally adjudicated against the contentions of the Board, and in favor of the petitioner.

(2). But the statement is not correct. It is one of those garbled mixtures of half-truth, fiction and false innuendo that can be more misleading and deceptive than unadulterated prevarication. It amounts to a transparent attempt to prejudice the petitioner in the eyes of this Court by reiteration of ill-founded and false accusations from which the petitioner has long since been completely vindicated.

(3). The real facts in this connection are as follows: The Board originally made 19 separate charges against the petitioner; abandoned 12 of these at the hearings, by not taking any evidence whatever as to them; and abandoned 3 more after taking evidence on them, by electing to make no findings thereon. As to the remaining 4 charges, on which the Board entered findings adverse to petitioner, none of them contained any allegation of "immoral and improper" conduct, each of them alleging only neglects of duty.

The District Court found no legal evidence whatever to sustain the findings of the Board on two of the four counts on which the Board made findings; declared that the evidence on the remaining two counts was conflicting; expressly held there was nothing in the evidence to support the Board's conclusion that petitioner had been guilty of "immoral and incorrect conduct"; and clearly indicated that its decision to uphold the validity of petitioner's removal was due solely to its view, afterward reversed by the Insular Supreme Court, that the District Court had no legal power to reverse a finding of fact made by the Board in such a case, unless there was no evidence whatever to support the finding. All of this is in the opinion of the District Court (FR 38, 41-45).

It remains only to remind this Court that the remaining two counts were ruled out, and petitioner's removal held to have been unlawful, by the Insular Supreme Court in its judgment of June 28, 1940, which was affirmed by the Circuit Court of Appeals on January 10, 1941, and became final on denial of certiorari by this Court on October 13, 1941.

(4). It follows that the statement last above quoted from respondent's brief, in order to conform it to the truth and the law of this case, should read:

> "The chief executive of the largest city in Puerto Rico, who had been unjustly accused of official neglect and misconduct, and unjustly removed from his office, by a few of his fellow citizens comprising the Board of Commissioners, was by the courts finally vindicated and ordered to be reinstated in his office."

B. Among their additions to the statement of the case, opposing counsel cite the fact that petitioner availed himself of Rule 39 (b) of the Circuit Court of Appeals to obtain a summary disposition of the Board's appeal to that Court from the original judgment of the Insular Supreme Court, while now urging here that that rule is invalid. This, too, is wholly immaterial to present issues. However, we may

properly remark in that connection that as long as that rule remains unabrogated counsel representing litigants in Puerto Rican cases will be obliged to observe it, and take every proper advantage of it, regardless of their views of its propriety or validity.

C. Opposing counsel also, in their supplemental statement of the case, referring to the date of the order of this Court denying certiorari in the former proceedings, October 13, 1941, seek to beg the whole question here, by making the bald statement that: "Fortunately, by that time the term of office of the petitioner had already expired." That, of course, is the present contention of the Board; and we are ready to concede that, if it were true, it would be fortunate from the viewpoint of that body and its counsel; but it remains for this Court to say whether or not it is true.

D. Our statement that the Insular Supreme Court treated the question of the tenure of the city manager under section 21 as a mixed one of law and fact is contradicted by our opponents; but is clearly borne out by the opinion of that tribunal.

In that part dealing with alleged official and public interpretation of the statute, that Court expressly mentioned, took judicial notice of, and considered the bearing and effect of a few isolated facts, basing largely thereon its interpretation of the statute as prescribing a four-year term (R. 44-45).

E. (1) The accuracy of our statement on pages 4 and 5 of petitioner's brief, to the effect that the Board, in its brief in the original proceedings in this case before the Insular Supreme Court, not only did not advocate its present theory of a four-year term, but actually took an exactly contrary view, is challenged by our opponents. That statement is based on the portions of the mentioned brief which are quoted in petitioner's motion for reconsideration, as set forth in the record beginning on page 51. The citation

t that point in our brief to page 50 of the record is a lerical error, but the statement is, we believe, correct.

(2) We have substantially verified the quotations as they ppear in the record, with a certified copy of the original rief in Spanish, obtained from the Clerk of the insular Supreme Court, and which we have available for examination by this Court if desired. As we understand the language employed, the Board's argument at that time was hat the term of the City Manager was during good behavior, subject to removal by the Board for misconduct, vith an added contention that the decision of the Board was inal and not reviewable by any court. For example, the rief in question, at page 29 thereof, and as quoted in petitioner's motion for reconsideration at page 52 of the record, says:

> "As it will be seen, the City Manager of the Capital is the only officer in Puerto Rico who retains, independently from the appointing power, his office during good behavior. That is, the tenure of his office is not limited and he holds the same until the tim when the appointing Board should be of the opinion that he has failed to observe good conduct or that he has performed, in addition to and independently from the good behavior, any of the acts specified in section 22 of the same statute."

(3) Is there any substantial distinction in principle between that statement of the views of the Board in 1940, and those advocated by the petitioner throughout these proceedings? We perceive none, except the possible contention above mentioned to the effect that the Board is the final arbiter,—no longer tenable in view of the precedent established by final adjudication in this very case.

POINT I.

There appears to be no great difference of opinion between opposing counsel and ourselves with regard to the general scope and meaning of the deference rule in relation to Puerto Rican cases. We are in complete accord with much that is said under this Point in respondent's brief, concerning judicial precedents affecting that rule.

But a diametrical difference exists between us on the question of the proper application of that rule in this particular case, or in other words on the question whether the Insular Supreme Court was, or was not, plainly, manifestly and inescapably wrong in its interpretation of the statute, within the meaning of that rule.

For the reasons set forth in the brief for petitioner we are convinced that the decision of the Insular Supreme Court with which we are here concerned is a typical example of what is meant by plainly, manifestly, and inescapably wrong, and that the Circuit Court of Appeals erred in not so holding. A careful consideration of respondent's brief fails to disclose any argument of substantial weight against that conclusion.

However, we wish to clarify a statement in the argument in our brief under Point I, on page 15, paragraph E, to the effect that this Court has never failed fully to examine every case coming to it within its statutory jurisdiction from any Territorial court.

Our opponents take issue with our statement in petitioner's brief (Point I-E, p. 15) that:

> "E. Examination of all of these cases shows that this Court has never failed fully to examine every case coming to it within its statutory jurisdiction from any Territorial court."

Our opponents say that this Court's refusal to grant certiorari to the Circuit Court of Appeals for the First Circuit in several cases where that Court had affirmed the judgments of the Supreme Court of Puerto Rico are instances

where, as opposing counsel say (Brief for Respondent, p. 12):

> "Respondent submits that this Court has repeatedly refused to make such an examination."

But of course we were referring in our brief to cases within the "statutory jurisdiction" given by the Congress to a party to a cause to appeal [or sue out a writ of error] *as a matter of right* from a Territorial court to a Circuit Court of Appeals, or to this Court prior to the time when that right of appeal or writ of error from the Territorial courts direct to this Court was abolished by the Congress.

That statutory right to a party to appeal or sue out a writ of error, as a matter of strict legal right granted by the Congress, carries with it of course the correlative duty of the reviewing court to exercise the jurisdiction thus vested in it by the Legislative power.

But no party possesses any such statutory right to a writ of certiorari from this Court, and this Court is under no statutory obligation to issue such a writ. No such right is granted by the Congress to a party to a cause. It is axiomatic that this Court does not sit for that purpose. As this Court's Rule 38(5) expressly states:

> "5. A review on writ of certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefor."

If the language of our brief, above quoted, is broad enough on its face to appear to include such discretionary writs of certiorari, then permission is requested to consider it amended so as to exclude them. It was, of course, intended to refer only to that "statutory jurisdiction" vested in a reviewing court which may be invoked as a matter of right by a party in a cause.

POINT IIA.

Under this caption in their brief our resourceful opponents charge us with having tacitly admitted that section 21 of the insular statute under consideration is not wholly clear and free from ambiguity. It is asserted in substance that our references to the Constitutional origin of the formula adopted by the Puerto Rican Legislature in that section to prescribe the tenure of the city manager, and to the judicial precedents showing that that formula as employed in the Constitution has been universally understood and held to mean life tenure subject to removal only for misconduct, constitute in themselves a resort to extrinsic aids and an admission of at least some ambiguity in the section sufficient to warrant such resort (Resp. Br. pp. 21-22).

It could as well be argued that to refer to a standard dictionary for the ordinary meaning of a word used in a statute, or to refer to a recognized scientific authority or to a sound judicial precedent for the correct significance of a word or phrase of art employed by the legislature, would amount to a resort to extrinsic aids for the interpretation of the statute; and no doubt that is true in a technical and limited sense. In that sense no statutory language could be regarded as wholly free from ambiguity, for it is always possible to raise some quibble over the ordinary meaning of the plainest word or provision, or to contend that it is employed in some special sense different from its usual acceptance. It would then logically follow that the established rule of statutory construction,—experience, or whatever it may be called,—to the effect that where the language of a statute is clear it will be enforced according to its plain terms, should be completely abandoned, and every statutory provision, no matter how plain and direct its terms, treated as doubtful and ambiguous until filtered through judicial examination in the light of extrinsic circumstances.

We perceive no good purpose to be served by a continuation of that discussion. From the viewpoint of the petitioner the essential point here is that the words "shall hold

office during good conduct," as used in section 21 to describe the tenure of the city manager, are precisely as clear and free from ambiguity as is the synonomous clause "shall hold their offices during good behavior" employed in the Federal Constitution to confer life tenures upon Federal judges. Either formula carried out according to the ordinary sense of its literal terms must necessarily result in life tenure subject to removal for misbehavior, because so long as the incumbent observes good behavior no legal ground for his removal arises.

Counsel for respondent pose these questions: "Why attach to the phrase "during good conduct" as used by the Puerto Rican Legislature in Act No. 99, the same meaning as given it by this Court in the *Hennen* or in the *Martin* cases? Why thus assume that the Puerto Rican lawmakers, in 1931, were cognizant of such meaning and intended so to use the phrase, a hundred years later?"

We ask in turn, is it reasonable to suppose that the Insular Legislature selected and included that phrase in section 21 by a mere coincidence, or that a majority of its members did not know or take the trouble to find out how it was interpreted by this Court? In that connection it should be borne in mind that the Insular Legislature deliberately rejected the original text of that section, expressly providing for a four-year term, and substituted an entirely new text including the phrase in question. (Br. for Pet., App. E, pp. 61-62.)

And finally, so far as this particular aspect is concerned, there is the well established principle that where a legislature adopts without reservation a statutory provision of another legislative jurisdiction, it is presumed also to have adopted the construction which had been placed on the provision by the court of last resort of that jurisdiction. *Henrietta Mining and Milling Co.* v. *Gardner*, 173 U. S. 123, 130; *James* v. *Appel*, 192 U. S. 129, 135; *Copper Queen Mining Co.* v. *Arizona Board*, 206 U. S. 474, 478.

Our able opponents, as part of their argument under Point IIA, three times repeat in substance their contention

that Mr. Benítez Castaño, first city manager of San Juan, "who," they say, "was instrumental in the drafting of the statute," contemporaneously with the approval thereof, expressed his understanding that his term of office was limited in point of time and would end on the Tuesday following the first Monday of 1937; and cite Appendix B of our brief, page 48 (Resp. Br. pp. 21, 26, 27). This relates to the second of the two letters written by Mr. Castaño on September 11, 1936, to the Board, the first requesting leave of absence for 150 working days (until some time in March, 1937) and tendering his resignation effective at the end of that period, and the second further explaining his reasons for such action and offering, if the Board desired at any time, to return to duty (Br. for Pet., App. B, pp. 47-48). In the second letter Mr. Castaño wrote, among other things:

> "Upon accepting the office of City Manager, I did so completely determined to fulfil this office until the Tuesday following the first Monday of 1937, (in this case 4th of January, 1937)."

It will be observed that counsels' statement that Mr. Castaño was instrumental in the drafting of the statute is entirely outside the record, and is quite indefinite as to what part, if any, it is claimed he took in the preparation of the bill, or what opportunity or qualifications he had for determining the intent of the tenure provision in section 21. Assuming counsels' statement is well founded, and that Mr. Castaño prepared or assisted in preparing the draft of the bill, it nevertheless would seem unlikely that he was responsible for the final text of section 21, prescribing the tenure of the city manager as "during good conduct," because the Legislature itself struck out the original text of that section, and substituted the entirely different present text (Br. for Pet., App. E, pp. 61-62).

It should also be noted that the above-quoted part of Mr. Castaño's letter is distinctly enigmatic, and is far from the positive and definite utterance counsel would have us believe it to be. The date mentioned does not correspond

exactly to any date fixed by the statute. Perhaps Mr. Castaño meant to say simply the first Monday of 1937, which was the date of installation of the first elective commissioners, and meant to indicate that he had originally intended to serve until then regardless of the question of legal tenure.

In any event, whatever Mr. Castaño may have meant by the quoted statement, it could not have been that he believed on September 11, 1936, when he wrote it, that his official term would end on the date specified, for in his prior letter of the same date he had asked for a leave of absence extending well into March, 1937, and had tendered a resignation not effective until the expiration of that leave, and in his second letter did not modify the first in those particulars.

Among the further contentions advanced by opposing counsel under their Point IIA, in support of their view that the phrase "during good conduct" has no definite or well settled meaning, appears their statement that as a matter of fact it has not in all cases been construed as implying or being equivalent to life tenure, and in support of that statement they cite *Stuart* v. *Ellsworth*, 105 Me. 523, 75 A. 59, and *Robertson* v. *Coughlan*, 196 Mass. 538, 82 N. E. 678 (Resp. Br. p. 24). Neither of the cited cases affords the slightest support for such a contention. We have been unable thus far to discover any judicial precedent that does afford such support, and apparently opposing counsel have been equally unsuccessful in that quest.

Another contention of our opponents is in substance that endless complications and undue embarrassments in the governmental structure and machinery are easily foreseeable if the city manager is held to have a life tenure (Resp. Br. p. 26). This, of course, is a matter of expert opinion on a controversial and unsettled matter of municipal governmental policy. Many cities in the United States adhere in both theory and practice to the view that the chief executive of the municipal government should have a life tenure, subject to removal only for cause. See City Man-

ager Government in the United States, 1940, Stone, Price and Stone, pp. 61, 64. We think it clear that the Puerto Rican Legislature, in the statute under consideration, followed a similar view. If the Board or the People of San Juan want the law changed in that particular, they should present the matter to the Legislature, and not ask the courts to make the change by the process of judicial legislation.

POINT IIB.

Opposing counsel are quite wrong in their assumption that for the purpose of the discussion of this point, it is conceded or assumed that the city manager's term of office is four years (Resp. Br. p. 29). We make no such concession or assumption.

As respondent's discussion of this point is not responsive to the corresponding argument presented in the brief for petitioner, and advances no tangible legal ground or authority in opposition to that argument, we leave the matter there so far as this reply brief is concerned.

POINT IIC.

Respondent's argument on this point is very largely a paraphrase and elaboration of the opinion of the Insular Supreme Court, reiterating the same contentions already met and disposed of in the original brief for petitioner.

However, there is something new in the attack launched by opposing counsel upon our suggestion that the original plan of the Puerto Rican Legislature in Act No. 99 to take the office of city manager very largely out of partisan politics, is obvious. They state that no evidence of such a plan is discernable from the face of the statute, and that none is pointed out in our brief (Resp. Br. p. 34).

From our viewpoint such evidences are plainly visible throughout the act. Several such evidences appear in the various specific provisions in effect exempting executive officers and employees of the municipality from removal

prior to expiration of term except on notice and hearing for misconduct. For examples of these see sections 21, 22, 27 and 39 (Br. for Pet., App. A, pp. 43-46).

Another and very strong evidence of such a plan is disclosed in the legislative history of section 21 of the act in question (Br. for Pet., App. E, p. 61), showing that as originally introduced that section expressly referred to a mayor and provided for his election at the polls every four years; and that the Legislature deleted that provision, so clearly subjecting the chief executive of the city to the direct influence of partisan politics, and substituted the present text, with other changes in the bill, providing for a city manager form of government, with the city manager holding his office "during good conduct."

Indeed the very choice and adoption by the Legislature of the city manager type of municipal government furnishes the plainest evidence of the intention of that body to remove the executive branch of that government from direct partisan political influences and interference, for it is a matter of fairly common knowledge that one of the great advantages claimed by its proponents for that form of municipal government, particularly where the city manager is invested with a life tenure subject to removal only for cause, is that it frees the essential municipal services from the direct impacts and disturbances of political reverses and upheavals.

Counsel for respondent assert that petitioner was in error in the statement in his opposition to the Board's motion for stay of execution that Mr. Geigel served as city manager without reappointment until after the expiration of his term according to respondent's four-year theory (R. 20), and by certified copy of the proceedings of the Board on February 10, 1941 (Resp. Br., App. B, pp. 58-60), they show that Mr. Geigel was reappointed on that date. As we have no reason to question the correctness of these representations, we acknowledge and apologize for the error, and withdraw the corresponding reference in our original brief (Br. for Pet. p. 34).

POINT IID.

As to this point, after carefully considering what has been said by our opponents under the corresponding caption in respondent's brief, we adhere to the views expressed in the original brief for petitioner.

The statement in respondent's brief (p. 51) that the question raised by petitioner under this caption has been decided against him by this Court in *Boynton* v. *Ball*, 121 U. S. 457, is erroneous. The holding in that case was to the effect that a discharge in bankruptcy may be set up in a state court to stay the execution of a judgment recovered against the bankrupt after the commencement of the proceedings in bankruptcy and before the discharge, even though the defendant did not before the judgment ask for stay of the proceedings under R. S. 5106. The distinction between that case and this one is obvious and vital. The stay of execution in that case was to be ordered by the trial court, and was in effect authorized and directed by this Court as mandatory under the facts and the bankruptcy statutes there involved. No such situation appears in the case at bar.

It is suggested by opposing counsel that the judgment of reinstatement became inoperative upon the expiration (according to their assumption) of petitioner's term of office (Resp. Br., p. 51), and they cite as supporting that theory *Gordon* v. *State* (1877), 47 Tex. 208, in which the Texas Supreme Court dismissed, for want of jurisdiction, an appeal taken by Gordon from a judgment removing him from the office of sheriff for official misconduct and neglect of duty, and then pointed out incidentally that the term of office of the former sheriff had long since expired and that a decision (on the merits) would therefore be useless and inoperative. There is nothing in the report of that case to indicate that it involved any controversy as to the length of the tenure of the office, such as constitutes the main issue here.

Our able opponents also invite attention to the so-called inherent power of courts to stay proceedings forever, and cite as referring to such a power, *American Surety Co.* v. *Fishback* (1917), 95 Wash. 124, 163 P. 488, and *Lineham* v. *McNeill* (1916), 31 D. L. R. 768 (Resp. Br., p. 51). The Washington case relates to a proceeding to stay execution under a local statute expressly authorizing such stays under prescribed conditions, and the decision therefore manifestly has no proper application in this case. And similarly the Canadian citation appears likewise inapposite here.

CONCLUSION.

For the reasons indicated in the prior brief for petitioner, and herein, the judgments of each and both of the lower appellate courts should be reversed, and the original judgment of the Insular Supreme Court directing reinstatement of the petitioner in the office of city manager of San Juan should be reaffirmed.

Respectfully submitted,

WILLIAM CATTRON RIGBY,
FRED W. LLEWELLYN,
GABRIEL DE LA HABA,
Attorneys for Petitioner.

HUGH R. FRANCIS,
RIGBY, LEON & WEILL,
Of counsel.

APPENDIX 1.

ISLAND OF PUERTO RICO,
CITY OF SAN JUAN, *ss:*

LUIS A. CASTRO duly sworn according to law deposes and says:

That he is of legal age, married, an attorney at law and resident of San Juan Puerto Rico.

That from September 11th 1931 to October 14th 1941, he was the Secretary of the Government of the Capital of Puerto Rico or City of San Juan, and as such had the custody of all records of the City Government.

That by Resolution No. 243, approved September 16th 1936 the Board of Commissioners of San Juan granted a leave of absence to the City Manager Hon. Jesús Benítez Castaño of 150 working days with pay which leave of absence terminated on March 19th 1937.

That by virtue of said leave of absence Hon. Bolivar Pagán who was at the time Treasurer of the Capital became City Manager according to the provisions of Section 24 of the Act of May 15, 1931, Number 99, and also as provided in the aforesaid Resolution No. 243.

That Hon. Bolivar Pagán acted as City Manager until January 4th 1937 on which date he appointed Carlos M. de Castro as Director of Health and Charities, granted a leave of absence to himself as Treasurer in order to attend to his Legislative duties as Senator in the Senate of Puerto Rico, and also granted a leave of absence to Hon. Jorge V. Dávila as Director of Public Works of the Government of the Capital of Puerto Rico, whereupon the Hon. Carlos M. de Castro automatically became Acting City Manager of the Capital of Puerto Rico by virtue of the provisions of section 24 of the aforementioned Act.

That Hon. Carlos M. de Castro took over his duties as Acting City Manager, Acting Treasurer and Acting Director of Public Works of the Capital of Puerto Rico and discharged the duties of said offices until March 19th 1937, on which date the leave of absence of Hon. Jesús Benítez Castaño expired, and on this date, pursuant to call of the Governor of Puerto Rico the Board of Commissioners of San Juan met at a special session for the sole purpose of appointing a permanent City Manager, and by virtue of Resolution No. 271, dated March 19th 1937 did appoint the

Hon. Carlos M. de Castro as City Manager of the Capital of Puerto Rico, or, City of San Juan, Puerto Rico.

That the Hon. Carlos M. de Castro discharged the duties of his office as City Manager of the Capital of Puerto Rico from March 19th 1937 up to and including January 5th 1939 on which date he was suspended from office without pay by a Resolution of the Board of Commissioners of San Juan, Puerto Rico.

That as Secretary of the Capital of Puerto Rico I was present at all the meetings of said Board and was also the Secretary of the Administrative Board of the Capital of Puerto Rico and was present at all its meetings.

That the above is the truth and nothing but the truth.

At San Juan, Puerto Rico, this 18th day of April 1944.

LUIS A. CASTRO.

Affidavit No. 3655 Duplicate.

Sworn and subscribed to before me by Luis A. Castro, of legal age married, attorney at law and resident of San Juan, Puerto Rico known personally to me to be the person making the above declaration under oath. At San Juan, Puerto Rico this 18th of April 1944.

RAFAEL BARAGAÑO DIEZ,
Notary Public

(Seal)

Permanent Commission.

APPENDIX 2.

I, RAFAEL CABRERA TORRES, AUDITOR OF THE CAPITAL OF PUERTO RICO CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE THE FOLLOWING APPEARS:

1. That Mr. Jesús Benitez Castaño in his capacity of City Manager was paid his salaries as such, from the date he presented his resignation, on September 16, 1936 until the date when the same became effective, March 18, 1937, by virtue of the expiration of the leave of absence granted to him by the Board of Commissioners of the Capital.

2. That during the time that Dr. Carlos M. de Castro in his capacity as Director of Health and Charity discharged the office of Acting City Manager by reason of the leave granted to Mr. Jesús Benítez Castaño and until the expiration of the same leave of the said Mr. Benítez Castaño, Dr. de Castro did not receive any salary from the Government of the Capital as City Manager thereof.

3. That Dr. Carlos M. de Castro only received salary as City Manager of the Capital from the date when he took possession of that office, March 19, 1937 until the date when he was suspended from office and pay by the Board of Commissioners of San Juan on January 5, 1939.

GIVEN IN SAN JUAN PUERTO RICO ON THIS 18th day of APRIL 1944 AND AT THE REQUEST OF DR. CARLOS M. DE CASTRO.

(SIGNED) R. CABRERA TORRES
AUDITOR OF THE CAPITAL

I, Luis A. Castro, Public Translator, do hereby certify: That the foregoing is a true and correct translation of the original in Spanish.

San Juan, Puerto Rico, April 18, 1944.

LUIS A. CASTRO
Public Translator

APPENDIX 3.

GOBIERNO DE LA CAPITAL

OFICINA DEL SECRETARIO DE LA CAPITAL
SAN JUAN, PUERTO RICO

LINO PADRON RIVERA
Secretario de la Capital

RESOLUTION No. 271

TO APPOINT DR. CARLOS M. DE CASTRO CITY MANAGER OF SAN JUAN AND FOR OTHER PURPOSES

WHEREAS, under date of yesterday the leave of absence granted by the Board of Commissioners to the former City

Manager of the Capital, Hon. Jesús Benítez Castaño, expired and by the terms of said Resolution the resignation presented by him to take effect at the expiration of the said leave of absence became effective;

WHEREAS, it is proper for the Board of Commissioners to appoint a City Manager instead of the outgoing City Manager.

THEREFORE, be it resolved by the Board of Commissioners:

Section 1: To appoint, as it hereby does appoint, Dr. Carlos M. de Castro, City Manager of the Capital.

Section 2: That this appointment be notified to Dr. Carlos M. de Castro, the Governor of Puerto Rico, Hon. Blanton Winship and to all the authorities for proper legal purposes.

Section 3: All Ordinances, Resolutions or Acts in conflict herewith are hereby repealed.

Section 4: This Resolution, being of an urgent character, as it is hereby declared to be, shall become effective immediately at its approval.

I, Luis A. Castro, a Public Translator, do hereby certify: That the foregoing is a true and correct translation of the original in Spanish.

San Juan, P. R., April 18, 1944.

LUIS A. CASTRO,
Public Translator.

(SEAL)

I, Dr. Alberto Hernández, Acting Secretary of the Capital, do hereby certify:

That the preceding is a translation of the original Resolution No. 271, in Spanish, which appears in the official journal of the Board of Commissioners of San Juan and which appears to have been approved by the said Board of Commissioners of San Juan at special meeting held in the City of San Juan Puerto Rico, on the nineteenth day of March 1937 and after request of Dr. Carlos M. de Castro I issue the present certificate under my hand and the official seal of the Capital of San Juan on this 18th day of April, 1944.

DR. ALBERTO HERNÁNDEZ,
Acting Secretary.

(Seal)

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MAY 8 1944
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 349.

CARLOS M. DE CASTRO, *Petitioner,*

v.

BOARD OF COMMISSIONERS OF SAN JUAN, *Respondent.*

PETITIONER'S MEMORANDUM IN REPLY TO THE QUESTION OF MR. ASSOCIATE JUSTICE FRANKFURTER AT THE ORAL ARGUMENT MONDAY, APRIL 24, 1944.

Mr. Justice Frankfurter's question appears in the appended copy of the Court Reporter's Transcript (3 pages) of the colloquy between court and counsel on that subject during the argument.

Status of the jurisdictional authority of the Federal Court over the outlying domain, including Alaska, Hawaii, etc., to see as to which there is appeal and as to which the mode of review is expressly by certiorari as in the Philippines.

1. PUERTO RICO: Appeals lie to the Circuit Court of Appeals, from the United States District Court for Puerto

Rico in all cases; and from the Supreme Court of Puerto Rico in all cases, civil or criminal, wherein the constitution or a statute or treaty of the United States or any authority exercised thereunder is involved, and in all other civil cases wherein the value in controversy, exclusive of interest and costs, exceeds $5,000; and in all habeas corpus proceedings. (Jud. Code, Sec. 128-(a)—"Second" and "Fourth"). Puerto Rican appeals go to the First Circuit (*ibid.* Sec. 128-(d); 28 U. S. C. A. Sec. 225, Cumulative Annual Pocket Part, For use during 1943).

2. HAWAII: Substantially the same as Puerto Rico; except that Hawaiian appeals go to the Ninth Circuit. Jud. Code, Sec. 128-(a)—"Second" and "Fourth", and "(d)".

3. ALASKA: Appeals lie to the Circuit Court of Appeals for the Ninth Circuit, from the District Court for the District of Alaska or any division thereof, in all cases. Jud. Code, Sec. 128-(a)—"Third", and "(d)."

4. VIRGIN ISLANDS: To the Third Circuit, from the District Court of the Virgin Islands, in all cases. Jud. Code, Sec. 128-(a)—"Third", and "(d)".

5. CANAL ZONE: To the Fifth Circuit, from the United States District Court for the District of the Canal Zone "in the cases and modes prescribed in sections 61 and 62, title 7, Canal Zone Code (48 Stat. 1122)."[1] Jud. Code, Sec. 128-(a)—"Third", and "(d)".

6. CHINA: To the Ninth Circuit, from the United States Court for China, in all cases. Jud. Code, Sec. 128-(a)—"Fifth", and "(d)".

7. INTERLOCUTORY ORDERS: The appropriate Circuit Courts of Appeals respectively likewise have jurisdiction to review interlocutory orders or decrees of the district courts, "including the District Courts of Alaska, Hawaii,

[1] "Canal Zone Code, 1934", Secs. 61 and 62, title 7.

Virgin Islands and Canal Zone" (Jud. Code Sec. 128-(b)—"First", and Sec. 129).[2]

8. RESORT TO THE SUPREME COURT: *Puerto Rico; Hawaii; Alaska; Virgin Islands; Canal Zone; and United States Court for China;* From all of the foregoing jurisdictions, resort to this Court is only upon petition for certiorari, under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925,—addressed to the judicial discretion of this Court; or else upon certificate of a circuit court of appeals under Section 239, certifying questions or propositions of law upon which instructions are desired by that court for the proper decision of the cause.

9. PHILIPPINE ISLANDS:

(A)—Section 7 of the Act of February 13, 1925, c. 229, 43 Stat. 936, 940, provides:

> "That in any case in the Supreme Court of the Philippine Islands, wherein the Constitution, or any statute or treaty of the United States is involved, or wherein the value in controversy exceeds $25,000, or wherein the title or possession of real estate exceeding in value the sum of $25,000 is involved or brought in question, it shall be competent for the Supreme Court of the United States, upon the petition of a party aggrieved by the final judgment or decree, to require, by certiorari, that the cause be certified to it for review and determination with the same power and authority, and with like effect, as if the cause had been brought

[2] Section 128-(b)—"First" of the Judicial Code, as amended by Section 1 of the Act of April 11, 1938, c. 354, 45 Stat. 422, *omits the United States District Court for Puerto Rico*, for some reason which does not appear from the Committee Report or Committee Hearings or from the debates on the floor of either House or Senate. The Act of February 13, 1925, had made this clause "First" of paragraph "(b)" read, all-inclusively (43 Stat. 936);

> "First. To review the interlocutory orders or decrees of the district courts which are specified in section 129";

and the specification in Section 129 deals only with the kinds of orders or proceedings to which it relates.

before it on writ of error or appeal; and, except as provided in this section, the judgments and decrees of the Supreme Court of the Philippine Islands shall not be subject to appellate review."

(B)—The Philippine Independence Act of March 24, 1934, provides (Sec. 7-(6); c. 84, 48 Stat. 456, 460, 462):

"Sec. 7. Until the final and complete withdrawal of American sovereignty over the Philippine Islands—

• • •

"(6) Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law; and such review shall also extend to all cases involving the constitution of the Commonwealth of the Philippine Islands."

(C)—Section 5 of the Act of Congress of August 24, 1937 (c. 754, 50 Stat. 751, 753), in defining the term "court of the United States", entirely omits the courts of the Philippine Islands [as well as those for the Canal Zone, and the United States District Court for China]. The Section reads:

"Sec. 5. As used in this Act, the term 'court of the United States' means the courts of record of Alaska, Hawaii, and Puerto Rico, the United States Customs Court, the United States Court of Customs and Patent Appeals, the Court of Claims, any district court of the United States, any circuit court of appeals, and the Supreme Court of the United States; the term 'district court of the United States' includes the District Court of the United States for the District of Columbia; the term 'circuit court of appeals' includes the United States Court of Appeals for the District of Columbia; the term 'circuit' includes the District of Columbia; the term 'senior circuit judge' includes the Chief Justice of the United States Court of Appeals for the District of Columbia; and the term 'judge' includes justice."

(D)—Historically, the marked difference between the provisions for the appeals from the Territories and the

other outlying possessions of the United States, except the Philippine Islands, to the various circuit courts of appeals, on the one hand,—and, on the other hand, the provision for review of decisions of the Supreme Court of the Philippine Islands only upon certiorari from this Court,—(and with a much higher minimum monetary limit in those cases in which jurisdiction is dependent upon the amount of money involved),—is plainly the outgrowth of the different attitudes of the Congress, from the beginning, toward the Philippine Islands and toward the other Territories and outlying permanent accretions to the United States.

From the outset, the legislation of the Congress with relation to the Philippine Islands has indicated an absence of any fixed intention to treat those Islands as permanent accretions to the United States.

Some of the marked differences between the Legislation for those Islands and that for the Territories and other permanent possessions of the United States, in several different directions, indicating,—and being themselves clearly the outgrowth of,—this different attitude and policy of the Congress toward those Islands, is noted in the succeeding parts of this memorandum.

10. *Differences between the Legislation of the Congress for the Philippine Islands and that for the Territories and other permanent territorial possessions of the United States.*

(A)—(1)—The statutory laws of the United States not locally inapplicable run generally to Puerto Rico, by virtue of the provisions of Section 9 of the Organic Act for Puerto Rico (Act of March 2, 1917, c. 145, 39 Stat. 951, 954; *Domenech* v. *National City Bank*, 294 U. S. 199, 204, and foot-note 11; *People of Puerto Rico* v. *Shell Co.*, 302 U. S. 253, 260, 264.)

(2) But directly to the contrary, the statutory laws of the United States do not run generally to the Philippine Islands.

(3) The policy of the Congress with relation to the Philippine Islands, has, from the beginning, differed sharply from that with relation to Puerto Rico; as well as from that with relation to Hawaii and the former Territories here in the mainland United States, which it was always understood were on their way to ultimate Statehood. From the beginning it has apparently been the policy of the Congress to prepare the Philippine Islands for ultimate independence from the United States; and its legislation with respect to them has differed accordingly from that with respect to Puerto Rico and the Territories. Accordingly, in harmony with that general policy of differentiating the status of the Philippine Islands, the original Organic Act for those Islands, the 'Foraker Act' of July 1, 1902, omitted the provision usually found in Territorial organic Acts extending to the Territory all the laws of the United States not locally inapplicable,—and which was incorporated in substance in the original Organic Act for Puerto Rico, as well as in the present Organic Act for that island. But in dealing with the Philippine Islands the Congress provided, directly to the contrary, in the first Organic Act, the Philippine 'Foraker Act' of July 1, 1902, c. 1369, Section 1, 32 Stat. 691, that Section 1891 of the Revised Statutes should *not* be in force in those Islands, and followed that up by providing in Section 5 of the next Organic Act, the "Jones Law", the so-called "Autonomy Act" of August 29, 1916 (c. 416, 39 Stat. 545, 547):

> "That the statutory laws of the United States hereinafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act."

(4) The Philippines, of course, like all other territories belonging to the United States, are subject to the plenary power of the Congress under Clause 2 of Section 3 of Article IV of the Constitution, to:

> "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States";

but the Constitution is self-executing in them only insofar as it protects the fundamental rights of free men. (*Balzac v. Porto Rico*, 258 U. S. 298, 305, 312-313, accepting as 'the settled law of the court' the doctrine of the separate concurring opinion of WHITE, J., in *Downes v. Bidwell*, 182 U. S. 244, 290-291.) With that limitation, the Congress may in its discretion adopt for any territory belonging to the United States such laws and 'Rules and Regulations' as it may deem fit; and may or may not, as it shall determine to be best from time to time, extend to any Territory the operation of any statute or law of the United States.

(B).—From the beginning of the government, the Congress has freely exercised this power.

The former Territories within the continental United States which have since been erected into States, were from the first generally understood to be destined for Statehood. Hence it early became the habit of the Congress to provide in their Organic Acts that all of the laws of the United States not locally inapplicable should be in force within the Territory; although, in the very beginning, it did not do so, but, instead, habitually inserted in each Organic Act a list of those of the Acts of Congress which should be in force within the particular Territory. Examples are Section 7 of the Act establishing the Territory of Orleans, now the State of Louisiana, Act of March 26, 1804, c. 38, 2 Stat. 283, 285; and Section 9 of the Organic Act for Florida, Act of March 30, 1822, c. 13, 3 Stat. 654, 657; but in the Florida Act there was added, at the end of the list, a general clause,—*'and all other Public Laws of the United States, which are not repugnant to the provisions of this Act' (3 Stat. supra, at p. 658).* And in the Organic Act for Wisconsin it was broadly declared that 'the laws of the United States are hereby extended, over, and shall be in force, in said Territory, so far as the same, or any provisions thereof, may be applicable' (Act of April 20, 1836, c. 54, Sec. 12, 5 Stat. 10, 15.) Such a general extension continued thereafter to be the habit, and was embodied in the

"Provisions Common to all the Territories" in Title XXIII of the Revised Statutes of 1873, as Section 1891, reading:

> "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect, within all the organized Territories and in every Territory hereafter organized as elsewhere within the United States."

That section was re-published without change in the 1878 edition of the Revised Statutes. Its effect was to incorporate all of the organized Territories into the Union. It was based upon the general understanding that all of the Territories were destined for Statehood; and it was in force at the outbreak of the Spanish American War; and when, by the treaty of peace at its conclusion, Puerto Rico and the Philippines were ceded to the United States; and when, at about the same time, Hawaii was annexed.

(C).—But, as above pointed out, in dealing with the new Territories thus acquired outside of the limits of the continental United States, the Congress from the outset made a sharp differentiation between the Philippine Islands on the one hand and the other newly acquired territories on the other hand, in relation to extending to them the laws of the United States, and in relation to the apparent purpose of the Congress concerning their ultimate destiny. To Hawaii it extended Section 1891 of the Revised Statutes in full force, thereby extending to that Territory not only the laws of Congress but also the Constitution in its full force, and thereby definitely 'incorporating' Hawaii into the Union. (Organic Act for Hawaii, Act of April 30, 1900, c. 339, Sec. 4, 39 Stat. 141; *Hawaii* v. *Mankichi*, 190 U. S. 197, 211, 220.)

And likewise as to Puerto Rico, while the Constitution in its full force was not extended to that island,—and Puerto Rico is, therefore, not 'incorporated' into the Union (*Balzac* v. *Porto Rico*, 258 U. S. 298, 305-314),—yet as

above pointed out, by the first Organic Act for that Island, the 'Foraker Act' of April 12, 1900, c. 191, Sec. 14, 31 Stat. 77, 80, it was provided:

> "That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal revenue laws";

and afterward by the present Organic Act for that Island, the Act of March 2, 1917, c. 145, Sec. 9, 39 Stat. 951, 954, that provision was re-enacted and continued in force; and further by Section 5 of that Act (39 Stat. at p. 953), United States citizenship was extended to the citizens of Puerto Rico.

(D).—But as to the Philippine Islands, directly to the contrary, the Congress provided by the first Organic Act for those islands, as already pointed out (Act of July 1, 1902, c. 1369, Sec. 1, 32 Stat. 691, 692), that:

> "The provisions of Section 1891 of the Revised Statutes, of 1878 *shall not apply* to the Philippine Islands" (*Italics supplied*);

and followed that up fourteen years later by the provisions of Section 5 in the next Organic Act, the "Autonomy Act" of August 29, 1916, hereinbefore quoted, expressly directing that the statutory laws of the United States enacted after that date "*shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act*"; and it never extended United States citizenship to the inhabitants of the Philippines.

11. It was manifestly because of this settled policy of the Congress making this differentiation between the Philippine Islands and the other Territories and possessions of the United States, that the differentiation was likewise made between them in relation to the review of decisions of their local courts of last resort; and that, while

appeals as of right are granted to circuit courts of appeals from the Supreme Courts of Puerto Rico and of the other Territories and territorial possessions, except the Philippine Islands; yet review of decisions of the Supreme Court of the Philippine Islands may be had only by certiorari in the judicial discretion of this Court.

Respectfully submitted,

Dated: April 28, 1944.

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APPENDIX.

MR. JUSTICE FRANKFURTER'S QUESTIONS AT THE ORAL ARGUMENT, APRIL 24, 1944.

Mr. Associate Justice Frankfurter: Is either the Circuit Court of Appeals or are we, here, to take a wholly independent view? Is it your proposition that this Court in a matter coming from the Puerto Rico Supreme Court should take a wholly independent view?

Colonel Rigby: I think so.

Mr. Associate Justice Frankfurter: What do you mean by that? Just paraphrase that: what you think our function is in reviewing a judgment of the Puerto Rico Supreme Court dealing with Puerto Rico legislation.

Colonel Rigby: I have tried to say here in our brief at * * * page 15 * * *

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Mr. Associate Justice Frankfurter: Have you included in your brief the present state of the jurisdictional authority of the Federal Courts over the outlying domain, including Alaska, Hawaii, etcetera to see as to which there is appeal and as to which the mode of review is expressly by *certiorari* as in the Philippines?

Colonel Rigby: No, I have not.

Mr. Associate Justice Frankfurter: Do you happen to know why Congress cut off review of the acts of the Supreme Court of the Phillippines except by *certiorari* and it did leave appeal from the Supreme Court of Puerto Rico?

Colonel Rigby: The answer to that, is it not, is that from the beginning legislation the Congress has taken a different course for the Philippines than for Puerto Rico? In the very beginning, the Senate, at the time of the approval of the Treaty with Spain—

Mr. Associate Justice Frankfurter (interposing) Not on this point, as far as I recall.

Colonel Rigby: What is that?

Mr. Associate Justice Frankfurter: Not on this point. As to both the Philippines and Puerto Rico, appeal may come direct to this Court from the Supreme Court of those two Islands or the Archipelago and the Island until it was cut off in the case of Puerto Rico to the First Circuit in 1913?

Colonel Rigby: My thought is—the only thing I know is that that goes to the general difference in the course of legislation between the way Congress has considered the Philippines and Puerto Rico * * *

Mr. Associate Justice Frankfurter: A good many cases come here or did come here, as a matter of right, in 1925, and the Puerto Rico cases were shunted off from this Court to the First Circuit in 1913, I think.

Colonel Rigby: To the First Circuit; I think at about that time.

Mr. Associate Justice Frankfurter: What I want to know is why, when 1925 came along, that was done; and whether there is any light on the subject that Congress did not assimilate the mode of review of the Islands' Supreme Court to that of Puerto Rico.

Colonel Rigby: I should be glad to make inquiry into that and include it in a memorandum which I may file here.

Mr. Associate Justice Frankfurter: Also: what light there is in reference to the other outlying domains, whether this was a survival without thought that no one got around to, or was by some design as to the relation of the review over the Puerto Rico Supreme Court so differently dealt with than in the case of the Philippines.

Colonel Rigby: I will be glad to. Of course Hawaii and Puerto Rico are dealt with in the same way.

Mr. Associate Justice Frankfurter: And the Virgin Islands and the Panama Canal: they were distributed among the various circuits.

Colonel Rigby: I will be glad indeed to put a memorandum on file.

I think, for the moment, that that is all I have to say.